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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/789,880	02/27/2004	Brian J. Conaway	3984500-149029	9552

7590

12/09/2005

Porter, Wright, Morris & Arthur LLP
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EXAMINER

TORRES, ALICIA M

ART UNIT

PAPER NUMBER

3671

DATE MAILED: 12/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/789,880

Applicant(s).

CONAWAY ET AL.

Examiner

Alicia M. Torres

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 September 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12, 15, 16 and 20-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12, 15, 16 and 20-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 20-22, 25-28 and 30 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The contours of the tines over non-uniform ground and the ability of the brace to conform to the contours of the tines was never presented in the Specification.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 2, 7-12, 23, 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Rethorn 1,131,553.

The Rethorn '553 patent discloses a rake comprising a head (15), an elongate handle (17) extending from the head, a plurality of parallel, spaced-apart, flexible tines (16) extending from

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the head opposite the handle, a brace (24) movable along the tines from a first position to a second position, thereby changing the effective stiffness of the tines (see Fig. 2), and a locking device (28) releasably securing the brace to the head in the first and second positions. The locking device is selectively operable to secure the brace to the head in the first and second positions. The brace (24) moves relative to the handle as the brace moves between the first and second positions. The spacing between the tines remains unchanged as the brace moves between the first and second positions.

Regarding claims 2, 7-12, 21-24: Each of the tines (16) extend through separate openings (25) in the brace. The locking device includes interlocking protrusions (18, 20). The locking device moves the brace to positions between the first and second position (i.e., inherently, the brace (24) moves between the solid line and phantom line positions indicated in Fig. 2). The locking device comprises a rotatable knob (28). The tines (16) are unremovable from the head (15). The handle extends to the tines. The head (15) includes a socket for receiving the handle (see Fig. 2).

4. Claim 29 is rejected under 35 U.S.C. 102(b) as being anticipated by Stapley et al. 5,713,193.

Stapley discloses a leaf rake comprising:

- A head (10)
- A handle (12, 18)
- Flexible tines (16) extending opposite from the head (10) and parallel with the handle (12, 18)

- A brace (22) movable along the tines (16) relative to the handle (12, 18)
- Wherein the spacing between the tines (16) remains unchanged as the brace (22) moves between the first and second positions.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 3-6, 15, 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rethorn 1,131,553.

The Rethorn '553 patent discloses the claimed invention, as stated above, except for the particularly claimed shapes or materials of construction. However, it would have been an obvious matter of design choice to construct the rake with T-shapes or cylindrical shapes or of plastic and/or metal materials.

Response to Arguments

7. Applicant's arguments filed 26 September 2005 have been fully considered but they are not persuasive. The applicant has failed to show how the rake of Rethorn will not behave as the claims require. The locking device of Rethorn is selectively operable to releasably secure the brace to the head in two positions and will prevent movement of the brace relative to the tines. In a first position, the lock releasably holds the brace in place using the tension in spring (26). In a

second position, the lock will releasably hold the brace in place while a user holds the handle (28) in place.

The applicant fails to disclose any structure that should preclude the lock of Rethorn. More specifically, the applicant fails to disclose any structure that would preclude the need for a user when locking the brace in place.

As stated in the prior Office Action, the applicant could distinguish their locking mechanism over Rethorn if any of the specifics provided in the Specification were included in the claims.

Conclusion

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alicia M. Torres whose telephone number is 571-272-6997. The examiner can normally be reached Monday through Thursday from 7:00 a.m. – 4:30 p.m.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will, can be reached at 571-272-6998.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the group receptionist whose telephone number is 703-305-1113. The fax number for this Group is 571-273-8300.



Thomas B. Will
Supervisory Patent Examiner
Group Art Unit 3671

AMT
November 28, 2005